

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

LAURIE G.,

Plaintiff,

v.

8:19-CV-208(TWD)

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

APPEARANCES:

OF COUNSEL:

SCHNEIDER & PALCSIK
for Plaintiff
57 Court Street
Plattsburgh, NY 12901

MARK A. SCHNEIDER, ESQ.

HON. GRANT JAQUITH
United States Attorney
for Defendant
100 S. Clinton St.
PO Box 7198
Syracuse, NY 13261-7198

SIXTINA FERNANDEZ, ESQ.
Special Assistant

THÉRÈSE WILEY DANCKS, United States Magistrate Judge

ORDER

Presently before the Court in this action, in which Plaintiff seeks judicial review of an adverse administrative determination by the Commissioner, pursuant to 42 U.S.C. §405(g), are cross-motions for judgment on the pleadings.¹ Oral argument was conducted in connection with those motions on July 31, 2020, during a telephone conference at which a court reporter was

¹ This matter, which is before me on consent of the parties pursuant to 28 U.S.C. § 636(c), has been treated in accordance with the procedures set forth in General Order No. 18. Under that General Order, once issue has been joined, an action such as this is considered procedurally as if cross-motions for judgment on the pleadings had been filed pursuant to Rule 12(c) of the Federal Rules of Civil Procedure.

present. At the close of argument I issued a bench decision in which, after applying the requisite deferential review standard, I found the Commissioner's determination resulted from the application of proper legal principles and was supported by substantial evidence, and I provided further detail regarding my reasoning and addressing the specific issues raised by the Plaintiff in her appeal.

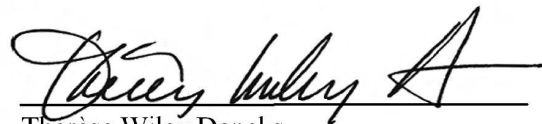
After due deliberation, and based upon the Court's oral bench decision, which has been transcribed, is attached to this Order and is incorporated in its entirety by reference herein, it is hereby,

ORDERED, as follows:

- (1) Defendant's motion for judgment on the pleadings is **GRANTED**;
- (2) The Commissioner's determination that Plaintiff was not disabled at the relevant times, and thus is not entitled to benefits under the Social Security Act, is **AFFIRMED**; and
- (3) The Clerk is directed to enter judgment, based upon this determination, dismissing Plaintiff's complaint in its entirety.

SO ORDERED.

Dated: August 7, 2020
Syracuse, New York

A handwritten signature in black ink, appearing to read 'Therese Wiley Dancks', written over a horizontal line.

Therese Wiley Dancks
United States Magistrate Judge

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

-----x
LAURIE G.,

Plaintiff,

-v-

19-CV-208

COMMISSIONER OF SOCIAL SECURITY,

Defendant.
-----x

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE THÉRÈSE WILEY DANCKS
July 31, 2020
100 South Clinton Street, Syracuse, New York

For the Plaintiff:
(Appearance by telephone)

SCHNEIDER & PALCSIK
57 Court Street
Plattsburgh, New York 12901
BY: **MARK A. SCHNEIDER, ESQ.**

For the Defendant:
(Appearance by telephone)

SOCIAL SECURITY ADMINISTRATION
26 Federal Plaza
Room 3904
New York, New York 10278
BY: **SIXTINA FERNANDEZ, ESQ.**

Hannah F. Cavanaugh, RPR, CRR, CSR, NYACR, NYRCR
Official United States Court Reporter
100 South Clinton Street
Syracuse, New York 13261-7367
(315) 234-8545

1 (The Court and all counsel present by telephone.
2 Time noted: 11:28 a.m.)

3 THE COURT: So I have before me a request for
4 judicial review of an adverse determination by the Acting
5 Commissioner under 42, United States Code, Section 405(g).

6 The background is as follows: Plaintiff was born in
7 April of 1975 and is currently 45 years old. She was 40 years
8 old at the onset of her alleged disability. She has a high
9 school IEP diploma. She has not engaged in substantial gainful
10 activity since the alleged onset date. She previously worked as
11 a certified nurse's aide. In her application for benefits, she
12 indicated she suffers from degenerative disc disease, a pinched
13 nerve in the left hip, and severe depression.

14 Procedurally, plaintiff filed for Title XVI
15 Supplemental Security Income benefits on February 29, 2016,
16 alleging disability beginning that same date. A hearing was
17 conducted by Administrative Law Judge Asad Ba-Yunus on April 25,
18 2018, wherein the plaintiff testified, as did a vocational
19 expert. A previous hearing before a different ALJ related to an
20 earlier claim was held on July 24, 2013. Plaintiff was
21 represented by an attorney at the hearing in this claim and
22 through the Appeals Council process in this claim. ALJ Ba-Yunus
23 issued a decision on May 22, 2018, finding that plaintiff was
24 not disabled at the relevant times. The Social Security
25 Administration made that a final determination of the agency by

1 the Appeals Council's February 7, 2019, denial of plaintiff's
2 request for review. This timely District Court action followed.

3 ALJ Ba-Yunus applied the five-step sequential test
4 for determining disability. At step one, he found plaintiff had
5 not engaged in substantial gainful activity since the onset date
6 of disability.

7 At step two, the ALJ concluded plaintiff has the
8 following severe conditions: Degenerative disc disease,
9 degenerative joint disease, morbid obesity, depression, and
10 learning disability.

11 At step three, the ALJ concluded that plaintiff's
12 conditions do not meet or medically equal any of the listed
13 presumptively disabling conditions. Then, after a review of the
14 record evidence, the ALJ determined plaintiff is capable of
15 performing sedentary work, but with several detailed postural
16 and nonexertional limitations considering her physical and
17 mental abilities.

18 At step four, the ALJ concluded plaintiff could not
19 perform her past relevant work.

20 At step five, the ALJ applied the Medical-Vocational
21 Guidelines, as well as obtained testimony from a vocational
22 expert, and concluded that plaintiff was not disabled.

23 As relevant to the time period in question, plaintiff
24 treated for primary care at the Ticonderoga Health Center. She
25 was seen there by several providers, including dietitians, care

1 managers, podiatrists, physician assistants, and physicians.
2 She regularly saw a Licensed Clinical Social Worker there,
3 Richard Jack, and mainly treated with Dr. Kathleen Huestis
4 there. The administrative record also contains treatment notes
5 of Dr. Armin Afsar-Keshmiri of Saratoga Spine, physician
6 assistants and Dr. Douglas Kirkpatrick of North Country Sports
7 Medicine, and Dr. John Adams from Eye Care for the Adirondacks.
8 She was also treated at Saratoga Hospital Pain Management
9 Center, mainly by Dr. Gabriel Radu, and was seen on three dates
10 in April of 2018 at Moses Ludington Hospital, and was also
11 admitted to Champlain Valley Physicians Hospital for one night
12 in April of 2018. These hospital visits concerned mainly
13 findings of pulmonary emboli. The administrative record also
14 contains records from Essex County Home Healthcare Coordination
15 Program, which is a support organization, but not a clinical
16 organization.

17 During the relevant time period, diagnostic studies
18 performed include various X-rays of her spine, her left ankle
19 and foot, and her right knee. She also had various MRIs of her
20 lumbar spine, cervical spine, and right knee. She also had an
21 EMG and nerve conduction study performed in September of 2015.

22 There's a source statement in the record from
23 treating physician Dr. Huestis of Ticonderoga Health Center
24 dated March 5, 2018. Other opinions included in the record are
25 from internal medicine consultant Dr. Albert Paolano, who opined

1 on plaintiff's physical limitations, and psychologists Dr.
2 Thomas Osika and Dr. Gina Scarano-Osika, who conducted
3 psychological evaluations. The agency record reviewer, Dr.
4 Marks, also provided an opinion regarding plaintiff's
5 limitations.

6 I've reviewed the record carefully, and in light of
7 the arguments of counsel and what counsel have presented in
8 their briefs, I've applied the requisite deferential standard,
9 which requires me to determine whether proper legal principles
10 were applied and whether the result is supported by substantial
11 evidence.

12 I'll turn first to the plaintiff's argument that the
13 ALJ erred in evaluating plaintiff's severe conditions, and
14 specifically that the ALJ failed to find plaintiff's low
15 intellectual functioning, right knee impairment, and diabetes as
16 severe conditions at step two.

17 At the second step of the evaluation, the medical
18 severity of a claimant's impairments is considered. A severe
19 impairment is any impairment or combination of impairments which
20 significantly limits the claimant's physical or mental ability
21 to do basic work activities, meaning the abilities and aptitudes
22 necessary to do most jobs. These include walking, standing,
23 sitting, lifting, pushing, pulling, reaching, carrying,
24 handling, seeing, hearing, speaking, understanding, carrying
25 out, and remembering simple instructions, use of judgment,

1 responding appropriately to supervision, coworkers, and work
2 situations, and dealing with changes in a routine work setting.

3 The claimant bears the burden of presenting evidence
4 to establish severity and must demonstrate that the impairment
5 has caused functional limitations that preclude her from
6 engaging in any substantial gainful activity for one year or
7 more. A finding of not severe should be made if the medical
8 evidence establishes only a slight abnormality which would have
9 no more than a minimal affect on an individual's ability to
10 work.

11 Here, the ALJ found plaintiff's learning disability
12 was severe and limited her to unskilled simple routine tasks
13 with only occasional changes in the work setting. Plaintiff
14 argues her low intellectual functioning should have been found
15 severe based upon her IQ scores and therefore she should have
16 been limited to jobs at the SVP 1 level, not jobs at the SVP 2
17 level that the vocational expert testified she could perform.

18 Plaintiff further argues she should have been limited
19 to only simple rote work with simple work-related decisions
20 because of her limited intellectual functioning. The Court
21 finds no merit in this argument since plaintiff has not
22 established that she had additional functional limitations
23 resulting from her low intellectual functioning that were not
24 accounted for in the step two finding or in the subsequent
25 residual functional capacity, or RFC, finding. I note plaintiff

1 did not indicate in her application for benefits or in her
2 testimony that she could not work due to her low intellectual
3 functioning. Also, plaintiff had task relevant work as a
4 certified nurse's assistant for many years, which the vocational
5 expert testified was a semi-skilled job at the SVP 4 level.

6 The Court also finds that the ALJ did not err in
7 finding her right knee impairments or diabetes were not severe.
8 Plaintiff has not established that either condition functionally
9 limited her more than the RFC for sedentary work. The treating
10 providers at North Country Sports Medicine who treated her right
11 knee condition did not indicate it caused functional
12 limitations, nor did any other provider or consultant.

13 As for the diabetes, the medical records show, and
14 plaintiff testified, that her diabetes was well controlled with
15 medications. Podiatry exams showed her lower extremities to be
16 neurologically intact, although she was found to have plantar
17 fasciitis. Her primary care physician found her to be in the
18 pre-diabetic range throughout much of the relevant time period.
19 The EMG and nerve conduction studies showed that her neuropathy
20 was unlikely to be symptomatic and it was consistent with
21 neuropathy seen in pre-diabetes. That examiner recommended
22 exercise and good glycemic control to stabilize or reverse the
23 process. Thus, the medical evidence and other evidence of
24 record establishes only a slight abnormality related to her knee
25 and diabetes, which would have no more than a minimal affect on

1 her ability to work. I also note that the ALJ proceeded beyond
2 step two to consider plaintiff's limitations and reach an RFC
3 determination such that his determination that her low
4 intellectual functioning, right knee condition, and diabetes
5 were not found severe is not a basis for remand.

6 Next, I turn to plaintiff's arguments that the ALJ
7 erred in his determination of plaintiff's RFC and that the ALJ
8 did not give proper weight to the opinion evidence.
9 Specifically, plaintiff argues that the ALJ erred in evaluating
10 the opinion of treating physician Dr. Huestis.

11 From the outset, I note that clearly the
12 determination of a claimant's disability is a legal
13 determination reserved to the Commissioner. I've done a
14 thorough and searching review of the record and find that the
15 substance of the treating physician rule was properly followed
16 by the ALJ. A treating physician's opinion is given controlling
17 weight if it is well supported by medically accepted clinical
18 and laboratory and diagnostic techniques and is not inconsistent
19 with other substantial evidence in the record.

20 When a treating physician's opinion is not given
21 controlling weight, the ALJ is to consider factors such as the
22 length and nature of the treatment relationship, the medical
23 evidence in support of the opinion , the consistency of the
24 opinion with the record as a whole, whether the opinion is from
25 a specialist, and any other factors that tend to support or

1 contradict the opinion. Each and every factor, however, need
2 not be recited. The treating physician's opinion need not be
3 afforded controlling weight when the opinion is not consistent
4 with opinions of other medical experts and is contradicted by
5 other substantial evidence of record.

6 Here, I find the ALJ properly assessed the medical
7 and nonmedical evidence of record and the RFC is supported by
8 substantial evidence. The ALJ thoroughly discussed the medical
9 evidence and other evidence of record, formulated the RFC based
10 upon an assessment of all medical and nonmedical evidence as a
11 whole for the relevant time period, and thoroughly explained his
12 analysis in arriving at the RFC. The ALJ's decision shows he
13 considered plaintiff's testimony, her adult function report, her
14 activities of daily living, and all treatment records for the
15 relevant period. He gave significant probative value to the
16 opinions of consulting psychologist Dr. Thomas Osika and
17 non-examining agency psychologist Dr. Marks. He gave very
18 little weight to the opinion of consulting psychologist Dr. Gina
19 Scarano-Osika because no specific opinion was provided regarding
20 plaintiff's functional abilities. He gave some weight to the
21 opinion of treating source Dr. Huestis, which was largely
22 consistent with sedentary work, but did not credit the more
23 restrictive postural activities and limiting effects of pain as
24 opined by Dr. Huestis.

25 Plaintiff argues the ALJ's assessment of the opinion

1 of Dr. Huestis was improper because the clinical and
2 radiological evidence supports her opinions since the lumbar
3 MRIs show moderate to severe central canal compromise or
4 stenosis causing mild foraminal narrowing, and the pain
5 management notes from Saratoga Hospital indicate she has chronic
6 low back pain radiating into her left leg. Plaintiff also
7 argues there is no medical evidence that is inconsistent with
8 Dr. Huestis's opinion.

9 For the following reasons, I find these arguments
10 unpersuasive: Initially, I note that an ALJ is not required to
11 accept every limitation assessed by an examining consultant or
12 in the opinion of a medical source, nor must the RFC identically
13 track any one of those opinions. The ALJ has the responsibility
14 of reviewing all of the evidence before him, resolving
15 inconsistencies, and making a determination consistent with the
16 evidence as a whole. Stated another way, it is the ALJ's
17 responsibility to weigh the various opinions, along with other
18 evidence, and determine which limitations were supported by the
19 overall evidence of record. The Court cannot reweigh the
20 evidence under the substantial evidence review standard.

21 Here, the ALJ clearly considered all of the opinions
22 and other evidence of record when determining plaintiff's
23 overall RFC, including the mental limitations. I've done a
24 thorough and searching review of the record and find the ALJ
25 properly assessed the opinions and gave good reasons for the

1 weight given to the opinions. Regarding the opinion of Dr.
2 Huestis, the ALJ acknowledged the treatment relationship with
3 plaintiff, but noted that the medical records and other
4 evidence, including plaintiff's reported daily activities,
5 showed the limitations opined by Dr. Huestis were not supported.
6 Progress notes, for example, by Dr. Huestis and other providers
7 at Ticonderoga Health Center showed plaintiff had diabetes
8 without complications and a back ache with no specific findings
9 on exam regarding her spinal condition other than some
10 tenderness on palpation.

11 Musculoskeletal exams, if charted at all, showed
12 edema and some tenderness, but were largely unremarkable with
13 negative straight leg raising test results. Plaintiff
14 complained of pain, but was noted to be ambulating normally.
15 Diabetic foot exams showed normal sensation on the right and
16 left. Her gait and station were charted as normal. She had
17 normal muscle tone and was able to transfer to and from a chair
18 without difficulty.

19 A 2017 MRI of the lumbar spine showed no significant
20 foraminal narrowing, although she had a mild disc protrusion at
21 the L5-S1 level. A cervical MRI in 2014 was normal. X-rays of
22 her spine showed mild degenerative disc disease and early
23 degenerative joint disease. An internal medicine consulting
24 exam showed some limited range of motion of the lumbar spine,
25 but no other significant findings. Records from North Country

1 Sports Medicine from prior to the relevant time period showed
2 she had a right meniscus repair of the knee, but instability
3 tests were negative. Records from Saratoga Spine showed that
4 she remained neurologically intact regarding her cervical spine
5 and upper extremities and plaintiff denied any balance
6 difficulties or weakness.

7 Her motor exams of her lower extremities, and later
8 in all groups, were normal at five out of five. Straight leg
9 raising was negative. She did have an antalgic gait on exam
10 sometimes when seen at the Saratoga Pain Management Center, but
11 in 2017, her gait was consistently non-antalgic and she denied
12 any lower extremity radiculopathy, numbness, tingling, burning,
13 or weakness. She had good muscle tone and bulk in her spine on
14 exam at the Saratoga Pain Management Center. She could
15 consistently walk on her toes and in tandem. Her strength was
16 five out of five in her hip flexors, knee extension, and ankle
17 flexion.

18 Regarding her activities of daily living, plaintiff
19 testified and reported to providers, and in her function report,
20 that she could drive without limitations. She cared for two
21 children with disabilities. She did household chores, although
22 they took extra time. She shopped. She did dishes and the
23 laundry, although she had to sit when hanging laundry and doing
24 dishes.

25 All in all, I find no error with the ALJ's

1 consideration of Dr. Huestis's opinion and I find that he gave
2 good reasons for the weight attributed to it. I also find no
3 merit in plaintiff's argument that the ALJ should have contacted
4 Dr. Huestis for more information since the record was complete
5 with no obvious gaps.

6 Regarding plaintiff's obesity, I find the ALJ did
7 properly consider it, in addition to her other impairments, in
8 determining the RFC. The ALJ noted plaintiff's weight and BMI.
9 He noted that he considered her obesity and assessed her other
10 impairments with regards to plaintiff's obesity and incorporated
11 those findings into the RFC.

12 Here, the records of her treating physicians and
13 examining sources do not indicate that any of those health
14 professionals considered plaintiff's obesity to be a significant
15 factor in plaintiff's ability to perform basic work activities,
16 but the ALJ did still note that it exacerbates her difficulties
17 and determined the RFC accordingly. The ALJ also considered
18 plaintiff's depression in limiting her to unskilled simple
19 routine tasks with only occasional changes to a routine work
20 setting.

21 Mental status exams throughout the record, including
22 the consulting and reviewing psychological examiners, were
23 largely normal, although she sometimes was found to have a
24 depressed mood with trouble sleeping and low energy. Still, the
25 records did show that she did receive treatment for depression,

1 including talk therapy and medications, which provided benefits
2 with minimal side effects. As such, I find no error there or
3 with the RFC as determined by the ALJ.

4 Looking now to plaintiff's complaints of pain and the
5 ALJ's evaluation of symptoms, plaintiff claims the ALJ failed to
6 properly assess her statements. With regard to the ALJ's
7 determination that plaintiff's testimony regarding her
8 limitations during the relevant time period was not entirely
9 consistent with the medical evidence and other evidence, I find
10 that it is properly explained and it is supported by the record.

11 Here, the record contradicts plaintiff's claims
12 concerning her limitations for the relevant time period. The
13 ALJ clearly considered plaintiff's complaints and the objective
14 medical records and the various treatment notes. The treatment
15 notes considered discussed her complaints of pain, the location
16 of her pain, the intensity of it, and the type of medications
17 she was on.

18 Treatment records from her providers showed plaintiff
19 was encouraged to be active and exercise, not that she was
20 considered disabled. Plaintiff's reports to her providers
21 during the relevant time period and in testimony and in her
22 function report show her various activities of daily living as
23 I've already outlined above. More specifically, though, she
24 could take care of her personal hygiene, do cooking, shopping,
25 and some laundry. She spent time with friends and family and

1 went shopping or to the bank or to medical appointments daily.
2 She could finish what she started. She followed spoken and
3 written instructions and she had no problems getting along with
4 people. Records show she was gardening, although it did cause
5 her some pain. Plaintiff also stated to providers that she
6 stopped working because she was terminated due to nonmedical
7 reasons.

8 In short, the record does not support plaintiff's
9 claims that she was unable to do basic work activities and
10 substantial evidence supports the ALJ's evaluation of symptoms.

11 Hold on for one second, please, everybody.

12 All right. Back on the record.

13 I also find all of the treatment briefly outlined
14 above was, as noted, thoroughly reviewed by the ALJ and the
15 records, including the medical and nonmedical evidence, provide
16 clear and substantial evidence to support the RFC determination
17 such that meaningful judicial review is possible. In *Cichocki*
18 *v. Astrue*, 729 F.3d 172, the Second Circuit stated that only
19 where the reviewing court is unable to fathom the ALJ's
20 rationale in relation to the evidence in the record would remand
21 be appropriate for further findings or a clearer explanation for
22 the decision.

23 Here, I find the ALJ's analysis regarding plaintiff's
24 functional limitations and restrictions affords an adequate
25 basis for meaningful judicial review, applies the proper

1 standards, and is supported by substantial evidence such that
2 additional analysis would be unnecessary and superfluous.

3 Lastly, the Court reviewed the later permitted
4 submission of plaintiff's counsel and the response from the
5 Commissioner regarding the subsequent decision of ALJ John
6 Farrell dated April 1, 2020, finding that the plaintiff had been
7 disabled since May 23, 2018, the day after the decision at issue
8 here. I agree with the Commissioner that this subsequent
9 decision is not new and material evidence and it is not part of
10 the record on this appeal. Standing alone, the subsequent
11 decision is not evidence that can change the outcome of this
12 appeal which must be determined on the record that was before
13 ALJ Ba-Yunus.

14 I also note that a review of the subsequent decision
15 shows that it is based in part upon evidence that was not before
16 the ALJ here, including other consultants's reports and further
17 medical records. All in all then, I find the ALJ properly
18 weighed the opinions of record for the relevant period, gave
19 good reasons for the weight given to the opinions, and the ALJ
20 properly considered all of the medical evidence and nonmedical
21 evidence of record. All of this supports the ALJ's
22 determination of plaintiff's RFC, as well as the ALJ's
23 evaluation of symptoms.

24 In short, I find that the ALJ properly explained the
25 reasons for the RFC and for his determinations. In light of the

1 foregoing and considering the entire record and the ALJ's
2 determination, I find the ALJ applied the appropriate legal
3 standards of review in considering all of the evidence in
4 determining plaintiff's RFC and that the RFC is supported by
5 substantial evidence, so I grant defendant's motion for judgment
6 on the pleadings and will enter a judgment dismissing
7 plaintiff's complaint in this action. A copy of the transcript
8 of my decision will be attached to the order should any appeal
9 be taken from my determination.

10 (Time noted: 11:52 a.m.)
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2 CERTIFICATE OF OFFICIAL REPORTER
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5 I, HANNAH F. CAVANAUGH, RPR, CRR, CSR, NYACR,
6 NYRCR, Official U.S. Court Reporter, in and for the United
7 States District Court for the Northern District of New York, DO
8 HEREBY CERTIFY that pursuant to Section 753, Title 28, United
9 States Code, that the foregoing is a true and correct transcript
10 of the stenographically reported proceedings held in the
11 above-entitled matter and that the transcript page format is in
12 conformance with the regulations of the Judicial Conference of
13 the United States.

14
15 Dated this 5th day of August, 2020.

16
17 *X Hannah F. Cavanaugh*

18 HANNAH F. CAVANAUGH, RPR, CRR, CSR, NYACR, NYRCR
19 Official U.S. Court Reporter
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